

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Citadel Restoration and Repair, Inc.,

Court File 12-CV-1403( ADM/JSM)

Plaintiff,

v.

Enhanced Flooring Products, LLC, Coating  
Holdings, LTD d/b/a Oak Ridge, and Linlee  
Marine Coatings, LLC, Bucky's Executive  
Flooring, LLC, and Performance Floors, LLC  
d/b/a Beyond Garages,

Defendant.

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MOTION, ANSWER AND AFFIRMATIVE DEFENSES

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Performance Floors, LLC, and properly nominated Performance Floors, LLC d/b/a  
Beyond Garages, LLC, by its attorney, Schomisch Legal Group LLC hereby moves the Court and  
answers as follows:

**MOTIONS**

1. Defendants move to dismiss for lack of jurisdiction based on parties and insufficient value of claim.
2. In the event the case is not dismissed Defendants move to change venue pursuant to 28 U.S.C. § 1440. This motion will be scheduled at a time convenient to the court in compliance with local rules.

**ANSWER**

Without waiving its objection to jurisdiction in motion, Defendant, Performance Floors, LLC answers Plaintiff's Complaint as follows:

1. Deny.
2. Deny.
3. Defendant lacks sufficient knowledge or information to admit or deny this

paragraph and therefore puts plaintiff to its proof thereon.

4. Upon information and belief, admit.

5. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

6. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

7. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

8. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

9. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

10. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

11. Deny and affirmatively allege as follows: Performance Floors, LLC is a Wisconsin Limited Liability Company. However, it does not do business as Beyond Garages, LLC. Beyond Garages, LLC, is a separate and distinct Limited Liability Company and is not a party in this suit.

12. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

13. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

14. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

15. Deny.

16. Upon information and belief, admit.

17. Upon information and belief, admit.

18. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

19. Upon information and belief, admit.

20. Deny and affirmatively allege that Performance Floors, LLC installs high performance floor coatings for hospitals. It has, on two occasions, installed high performance floor coatings at two Hu Hot restaurants in Eau Claire, Wisconsin and in Indiana, which used Citadel products purchased from Citadel.

Chris Haring of Performance Floors, LLC did receive two days of training required by Citadel as part of Performance Floors, LLC's purchase of their floor coatings.

21. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

22-34. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

35-42. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

43. Conditionally admits. Shortly after the first order by Performance Floors, LLC from Citadel, Citadel directed Performance Floors, LLC to pick up the Citadel products from Enhanced Flooring at a warehouse near Ripon, Wisconsin.

44. Deny.

45. Deny.

46. Deny.

47. Deny any knowledge of any agreement, deny that Performance Floors, LLC purchased any products from Coating in 2011. Affirmatively allege that Performance Floors, LLC purchased Enhanced Flooring floor coatings as a subcontractor for Beyond Garages, LLC for use in garage make-overs contracted for by Beyond Garages, LLC. Said coatings were used

in garages.

48. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

49. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

50. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

51-54. Defendant lacks sufficient knowledge or information to admit or deny this paragraph and therefore puts plaintiff to its proof thereon.

55-57. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

58-71. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

72-77. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

78. Defendant realleges all of the paragraphs above as if set forth herein.

79-82. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

83-90. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

91-94. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

95-100. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

101-102. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

103-107. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

108-111. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

112-115 Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

116. Defendant realleges all of the paragraphs above as if set forth herein.

117. Defendant lacks sufficient knowledge or information to admit or deny these paragraphs and therefore puts plaintiff to its proof thereon.

118. Defendant realleges all of the paragraphs above as if set forth herein.

119. Deny.

120. Deny. As affirmatively alleged above, Performance Floors, LLC purchased a different product from Enhanced Flooring for use in contracts that were obtained by Beyond Garages, LLC, for use in garages.

121. Deny.

#### **AFFIRMATIVE DEFENSES**

1. Plaintiff's claim fails to state a claim upon which relief can be granted.
2. Defendant, Performance Floors, LLC, does not have an exclusive agreement with Plaintiff and in a free market economy is justified in doing legal business with other parties in a legal manner.
3. The Plaintiff has failed to mitigate its damages, if any.
4. The Plaintiff has failed necessary and indispensable parties.

WHEREFORE, defendant Performance Floors, LLC demands the following relief:

- A. Dismissal from this case with costs and fees.
- B. Dismissal for failure to state a claim upon which relief can be granted.
- C. In the event plaintiff's claim is not dismissed, for a change of venue to the Eastern

District of Wisconsin where all of the defendants reside and where all of the witnesses will be located, pursuant to 28 USC Section 1440(a).

Dated this 3<sup>rd</sup> day of July, 2012.

SCHOMISCH LEGAL GROUP LLC  
Attorneys for Defendant Performance  
Floors, LLC d/b/a Beyond Garages

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